



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL-9944-66-Region 9]

Tentative Determination to Approve Site Specific Flexibility for Closure and Monitoring of the Picacho Landfill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency, Region IX, is making a tentative determination to approve two Site Specific Flexibility Requests (SSFRs) from Imperial County (County or Imperial County) to close and monitor the Picacho Solid Waste Landfill (Picacho Landfill or Landfill). The Picacho Landfill is a commercial municipal solid waste landfill (MSWLF) operated by Imperial County from 1977 to the present on the Quechan Indian Tribe of the Fort Yuma Indian Reservation in California.

Imperial County is seeking approval from EPA to use an alternative final cover and to modify the prescribed list of detection-monitoring parameters for ongoing monitoring. The Quechan Indian Tribe (Tribe) reviewed the proposed SSFRs and determined that they met tribal requirements. EPA is now seeking public comment on EPA's tentative determination to approve the SSFRs.

DATES: Comments must be received on or before [insert date 30 days after date of publication in the Federal Register]. If sufficient public interest is expressed by [insert date 15 days after date of publication in the Federal Register], EPA will hold a public hearing at the Quechan

Community Center, located at 604 Picacho Rd., in Winterhaven, CA on [insert date 30 days after date of publication in the Federal Register (OFR: If computed date falls on Friday, please insert date of the following Monday)] from 6:00 p.m. to 8:00 p.m. If by [insert date 15 days after date of publication in the Federal Register] EPA does not receive information indicating sufficient public interest for a public hearing, EPA may cancel the public hearing with no further notice. If you are interested in attending the public hearing, contact Steve Wall at (415) 972-3381 to verify that a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-RCRA-2015-0445, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: wall.steve@epa.gov*.
- *Fax: (415) 947-3564*
- *Mail: Steve Wall, Environmental Protection Agency Region IX, Mail code: LND 2-3, 75 Hawthorne Street, San Francisco, CA 94105-3901.*

Instructions: EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any email, web site submittal, disk or

CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. See below for instructions regarding submitting CBI.

The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Tips for Submitting Comments to EPA:

1. Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by Docket ID No. EPA-R09-RCRA-2015-0445 and other identifying information (subject heading, Federal Register date and page number).
- Explain why you agree or disagree, suggest alternatives, and provide suggestions for substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be verified.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Make sure to submit your comments by the comment period deadline identified.

2. Submitting Confidential Business Information (CBI):

- Do not submit CBI to EPA through <http://www.regulations.gov> or e-mail.
- Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.
- In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

3. Additional Background Information

All documents in the administrative record docket for this determination are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in <http://www.regulations.gov> and in hard

copy at the EPA Library, located at the Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California. The EPA Library is open from 9:00 a.m. to 4:00 p.m., Monday through Thursday, excluding legal holidays, and is located in a secured building. To review docket materials at the EPA Library, it is recommended that the public make an appointment by calling (415) 947-4406 during normal business hours. Copying arrangements will be made through the EPA Library and billed directly to the recipient. Copying costs may be waived depending on the total number of pages copied.

FOR FURTHER INFORMATION CONTACT: Steve Wall, Land Division, LND 2-3 Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105-3901; telephone number: (415) 972-3381; fax number: (415) 947-3564; e-mail address: *wall.steve@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Legal Authority for this Proposal

Under sections 1008, 2002, 4004, and 4010 of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6901 *et seq.*, Congress required EPA to establish revised minimum federal criteria for MSWLFs, including landfill location restrictions, operating standards, design standards, and requirements for ground water monitoring, corrective action, closure and post-closure care, and financial assurance. Under RCRA section 4005, states are to develop permit programs for facilities that may receive household hazardous waste or waste from conditionally exempt small quantity generators of hazardous waste, and EPA is to determine whether the state's program is adequate to ensure that facilities will comply with the revised federal criteria.

The MSWLF criteria are in the Code of Federal Regulations at 40 CFR part 258. These regulations are prescriptive, self-implementing and apply directly to owners and operators of MSWLFs. Many of these criteria include a flexible performance standard as an alternative to the prescriptive, self-implementing regulation. The flexible standard is not self-implementing, and requires approval by the Director of an EPA-approved state MSWLF permitting program. However, EPA's approval of a state program generally does not extend to Indian Country because states generally do not have authority over Indian Country. For this reason, owners and operators of MSWLF units located in Indian Country cannot take advantage of the flexibilities available to those facilities that are within the jurisdiction of an EPA-approved state program. However, the EPA has the authority under sections 2002, 4004, and 4010 of RCRA to promulgate site-specific rules to enable such owners and operators to use the flexible standards. See *Yankton Sioux Tribe v. EPA*, 950 F. Supp. 1471 (D.S.D. 1996); *Backcountry Against Dumps v. EPA*, 100 F.3d 147 (D.C. Cir. 1996). EPA refers to such rules as “Site Specific Flexibility Determinations” and has developed draft guidance for owners and operators on preparing a request for such a site-specific rule, entitled “Site-Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country Draft Guidance,” EPA530-R-97-016, August 1997)(Draft Guidance).

II. Background

The Picacho Landfill is located on Quechan tribal lands on the Fort Yuma Indian Reservation approximately four miles north-northeast of the community of Winterhaven, in Imperial County, California. The Picacho Landfill is a commercial MSWLF operated by Imperial County from 1977 to the present. The landfill site is approximately 12.5 acres.

In January 2006, the Tribe requested that EPA provide comments on the County’s closure plan.

Between 2006 and 2011, EPA worked with the Tribe, the Bureau of Indian Affairs (BIA) and the County to develop and reach agreement on the closure plan and SSFRs. During this time, EPA also reviewed the SSFRs to determine whether they met technical and regulatory requirements. On October 27, 2010, Imperial County submitted its Picacho Final Closure/Post-Closure Maintenance Plan. EPA provided a final round of comments on February 10, 2011, which Imperial County incorporated as an addendum. On April 30, 2012, the Tribe approved the Picacho Landfill Final Closure/Postclosure Maintenance Plan as amended, and, pursuant to EPA's Draft Guidance, the Tribe forwarded to EPA two SSFRs that had been submitted by Imperial County to close and monitor the Picacho Landfill. The requests seek EPA approval to use an alternative final cover meeting the performance requirements of 40 CFR 258.60(a), and to modify the prescribed list of detection-monitoring parameters provided in 40 CFR 258.54(a)(1) and (2) for ongoing monitoring.

III. Basis for Proposal

EPA is basing its tentative determination to approve the site-specific flexibility request on the Tribe's approval, dated April 30, 2012, EPA's independent review of the Picacho Landfill Final Closure/Postclosure Maintenance Plan as amended, and the associated SSFRs.

A. Alternative Final Cover SSFR: Alternative Final Cover System

The regulations require the installation of a final cover system specified in 40 CFR 258.60(a), which consists of an infiltration layer with a minimum of 18 inches of compacted clay with a permeability of 1×10^{-5} cm/sec, covered by an erosion layer with a minimum six inches of topsoil. Imperial County seeks approval for an alternative final cover designed to satisfy the performance criteria specified in 40 CFR 258.60(b); Imperial County proposes to replace this with an alternative cover which would consist of two and a half feet of native soil to control

infiltration covered by six inches of a soil gravel mixture to control erosion.

EPA is basing its tentative determination on a number of factors, including: 1) Research showing that prescriptive, self-implementing requirements for final covers, comprised of low permeability compacted clay, do not perform well in the arid west. The clay dries out and cracks, which allows increased infiltration along the cracks; 2) Research showing that in arid environments thick soil covers comprised of native soil can perform as well or better than the prescriptive cover; and 3) Imperial County's analysis demonstrates, based on site-specific climatic conditions and soil properties, that the proposed alternative soil final cover will achieve equivalent reduction in infiltration as the prescriptive cover design and that the proposed erosion layer provides equivalent protection from wind and water erosion. This analysis is provided in Appendix D and Appendix D-1 of the Picacho Landfill Final Closure/Postclosure Maintenance Plan dated October 27, 2010 and amended on February 20, 2011.

B. Groundwater Monitoring SSFR: Alternative Detection Monitoring Parameters

The regulations require post-closure monitoring of 15 heavy metals, listed in 40 CFR part 258, Appendix I. Imperial County, proposes to replace these, with the exception of arsenic, with the alternative inorganic indicator parameters chloride, nitrate as nitrogen, sulfate, and total dissolved solids.

EPA's tentative determination is based on the fact that the County has performed over 15 years of semi-annual groundwater monitoring at the site, and during that time arsenic was the only heavy metal detected at a value that slightly exceeded the federal maximum contaminant level (MCL), a standard used for drinking water.

IV. Additional Findings

In order to comply with the National Historic Preservation Act, 54 U.S.C. 100101 *et seq.*, Imperial County Department of Public Works will coordinate with the Tribe to arrange for a qualified Native American monitor to be present during any work. If buried or previously unidentified resources are located during project activities, all work within the vicinity of the find will cease, and the provisions pursuant to 36 CFR 800.13(b) will be implemented. If, during the course of the Landfill closure activities, previously undocumented archaeological material or human remains are encountered, all work shall cease in the immediate area and a qualified archaeologist shall be retained to evaluate the significance of the find and recommend further management actions.

Though no known threatened or endangered species or their habitat exist on the site, in order to ensure compliance with the Endangered Species Act, 16 U.S.C. 1536 *et seq.*, a preconstruction survey will be conducted prior to cover installation to ensure no threatened or endangered species are present. In particular, the survey will look for the presence of desert tortoises, which may occur in Imperial County. Should desert tortoises or other threatened or endangered species be encountered in the survey, or at any time during the closure of the Picacho Landfill, the County shall contact the USFWS to develop avoidance measures to ensure that impacts to the species are minimized. Following closure and vegetation restoration activities, the project site may become suitable for threatened and endangered species. This would be a beneficial effect.

Under Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB).

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only.

Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA.

Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, “Federalism,” (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

This rule also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is EPA's conservative analysis of the potential risks posed by SRPMIC's proposal and the controls and standards set forth in the application.

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because

it is not a significant regulatory action under Executive Order 12866.

As required by section three of Executive Order 12988, “Civil Justice Reform,” (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments,” (65 FR 67249, November 9, 2000), calls for EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” *See also* “EPA Policy for the Administration of Environmental Programs on Indian Reservations,” (November 8, 1984) and “EPA Policy on Consultation and Coordination with Indian Tribes,” (May 4, 2011). EPA consulted with the Tribe throughout Imperial County’s development of its closure and monitoring plans for the Picacho Landfill.

EPA specifically solicits any additional comment on this tentative determination from tribal officials of the Quechan Indian Tribe.

List of Subjects in 40 CFR Part 258

Environmental protection, Municipal landfills, Final cover, Post-closure care groundwater Monitoring, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: March 28, 2016.

Jared Blumenfeld,

Regional Administrator, Region IX.

For the reasons stated in the preamble, 40 CFR part 258, Criteria for Municipal Solid Waste Landfills, is proposed to be amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority citation continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c), 6981(a).

Subpart F -- Closure and Post-Closure Care

2. Section 258.62 is amended by adding paragraph (b) to read as follows:

§ 258.62 Approval of Site-specific Flexibility Requests in Indian Country.

* * * * *

(b) Picacho Municipal Solid Waste Landfill – Alternative list of detection monitoring parameters and alternative final cover. This paragraph (b) applies to the Picacho Landfill, a Municipal Solid Waste landfill operated by Imperial County on the Quechan Indian Tribe of the Fort Yuma Indian Reservation in California.

(1) In accordance with 40 CFR 258.54(a), the owner and operator may modify the list of heavy metal detection monitoring parameters specified in 40 CFR 258, Appendix I, as required during Post-Closure Care by 40 CFR 258.61(a)(3), by replacing monitoring of the inorganic constituents with the exception of arsenic, with the inorganic indicator parameters chloride, nitrate as nitrogen, sulfate, and total dissolved solids.

(2) In accordance with 40 CFR 258.60(b), the owner and operator may replace the prescriptive final cover set forth in 40 CFR 258.60(a), with an alternative final cover as follows:

(i) The owner and operator may install an evapotranspiration cover system as an alternative final cover for the 12.5 acre site.

(ii) The alternative final cover system shall be constructed to achieve an equivalent reduction in infiltration as the infiltration layer specified in §258.60(a)(1) and (2), and provide an equivalent protection from wind and water erosion as the erosion layer specified in §258.60(a)(3).

(iii) The final cover system shall consist of a minimum three-feet-thick multi-layer cover system comprised, from bottom to top, of:

(A) a minimum 30-inch thick infiltration layer consisting of:

(1) existing intermediate cover; and

(2) additional cover soil which, prior to placement, shall be wetted to optimal moisture as determined by ASTM D 1557 and thoroughly mixed to near uniform condition, and the material shall then be placed in lifts with an uncompacted thickness of six to eight inches, spread evenly and compacted to 90 percent of the maximum dry density as determined by ASMT D 1557, and shall:

(i) exhibit a grain size distribution that excludes particles in excess of three inches in diameter;

(ii) have a minimum fines content (percent by weight passing U.S. No. 200 Sieve) of seven percent for an individual test and eight percent for the average of ten consecutive tests;

(iii) have a grain size distribution with a minimum of five percent finer than five microns for an individual test and six percent for the average of ten consecutive tests; and

(iv) exhibit a maximum saturated hydraulic conductivity on the order of $1.0E-03$ cm/sec.;

and

(3) a minimum six-inch surface erosion layer comprised of a rock/soil admixture. The surface erosion layer admixture and gradations for 3% slopes and 3:1 slopes are detailed below:

(i) 3% slopes: For the 3% slopes the surface admixture shall be composed of pea gravel (3/8-inch to 1/2-inch diameter) mixed with cover soil at the ratio of 25% rock to soil by volume with

a minimum six -inch erosion layer.

(ii) For the 3:1 side slopes the surface admixture shall be composed of either: gravel/rock ($\frac{3}{4}$ -inch to one-inch diameter) mixed with additional cover soil as described in paragraph (b)(2)(iii)(A)(2) of this section at the ratio of 50% rock to soil by volume and result in a minimum six-inch erosion layer, or gravel/rock ($\frac{3}{4}$ -inch to two-inch diameter) mixed with additional cover soil as described in paragraph (b)(2)(iii)(A)(2) of this section at the ratio of 50% rock to soil by volume and result in a minimum 12-inch erosion layer.

(iii) The owner and operator shall place documentation demonstrating compliance with the provisions of this Section in the operating record.

(iv) All other applicable provisions of 40 CFR part 258 remain in effect.

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